

ADVISORY OPINION NO. 95-40

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON SEPTEMBER 7, 1995

GOVERNMENTAL BODY SEEKING OPINION

An Association of State law enforcement officers

OPINION SOUGHT

Is it a violation of the Ethics Act for the Association to provide specific information, logos or ad slicks to private companies which volunteer to purchase advertisements or other communications supporting Association projects?

Is it a violation of the Ethics Act for the Association to utilize unsolicited private donations, which have not been earmarked by the donor to benefit a charitable purpose, to finance Association office expenses and/or administrative expenses?

FACTS RELIED UPON BY THE COMMISSION

The Association plans a public information campaign to gain support for legislation giving the Association's members a pay raise. It is anticipated that some State businesses will, once the campaign begins, volunteer to buy media advertisements supporting the Association's campaign. The Association expects the advertisements would actually be placed and paid for by the donor businesses and would include donor identification.

The Association would like to provide specific facts, logos or ad slicks to be used in the advertisement to the company.

The Association also represents that many times it receives voluntary donations from concerned citizens throughout the State. Often these donations are accompanied by a request that the donation be used for a distinct charitable purpose. However, sometimes these contributions are not earmarked for any specific function. The Association would like to utilize the donations that have not been solicited and have not been earmarked by the donor to finance Association office expenses and/or administrative expenses.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6B-2-5(c)(1) states in pertinent part that...a public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: **Provided**, That no public official or public employee may solicit for a charitable

purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee...No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

- (A) Is doing or seeking to do business of any kind with his or her agency;
- (B) Is engaged in activities which are regulated or controlled by his or her agency; or
- (C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

West Virginia Code §6B-2-5(c)(2) states in pertinent part that...Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

- (C) Unsolicited gifts of nominal value or trivial items of informational value;...

West Virginia Code §6B-3-5(1) states in pertinent part that...Any person who has made expenditures, not required to be reported under other sections of this chapter, exceeding five hundred dollars in the aggregate within any three month period or exceeding two hundred dollars in the aggregate within any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed or calculated primarily to influence legislation, shall be required to register and report...as a sponsor of a grass roots lobbying campaign.

ADVISORY OPINION

Gift of Advertisements

The Association plans a public information campaign to gain support for legislation giving the Association's members a pay raise. It is anticipated that some state businesses will, once the campaign begins, volunteer to buy media advertisements supporting the Association's campaign. The Association expects the advertisements would actually be placed and paid for by the donor businesses and would include donor identification.

The Association asks if it would be proper to provide any such donors with specific facts, logos or ad slicks to be used in the preparation of the advertisements in support of the pay raise or other needs of the Association and its members.

The Ethics Act prohibits public servants from accepting gifts from persons who are engaged in activities regulated or controlled by their agency. The Commission has earlier ruled that State law enforcement officers regulate all citizens of the State, individual and corporate, since they enforce statewide laws which apply to all individuals and business entities. It is therefore improper for them to accept a gift from any State citizen unless the gift fits into one of the exemptions established by the Legislature.

The Commission has also ruled that an association of public servants is bound by the same ethical standards to which its constituent members are subject. An association of public servants may not perform an act which its members are prohibited from performing. Public servants may not use a surrogate to perform activities they themselves are bound not to perform. (See Advisory Opinion No. 92-37) The Association, like its members, is prohibited from accepting a gift from regulated persons unless it fits into an exemption.

Among the several gift exemptions, only one has any bearing on the Association's question. That exemption permits a public servant to accept an **unsolicited** gift of nominal value - \$25 or less - even from a regulated person.

The Commission has considered whether the \$25 limitation should be multiplied by the number of the Association's members to establish the maximum allowable value of a gift to the Association. Such an approach would permit the Association, with more than 600 members, to accept a gift of \$15,000. Clearly such a result would be at odds with the Ethics Act's goals.

The Commission therefore finds that it would be improper for the Association to accept a gift of more than \$25, even though the larger gift is intended as a gift to the Association's entire membership and would not exceed \$25 for each member. A gift of a newspaper or other media advertisement supporting the Association's efforts to secure a pay raise for its members is a gift and therefore may not be accepted by the Association if it exceeds a cost of \$25.

While public servants are prohibited from accepting gifts in excess of \$25 from interested persons, no provision of the Ethics Act prohibits interested persons from making such gifts. Clearly a private business could run an ad supporting pay raises without the ad having been solicited by or having received the approval of the Association or its members. However, the Association and its members may do nothing to encourage making such a gift and may take no action to facilitate the publication of such an advertisement.

Therefore, it would be a violation of WV Code 6B-2-5(c) for the Association, or its members, to provide potential donors with specific facts, logos or ad slicks to be used in the preparation of the advertisements in support of the pay raise. This should not be interpreted as prohibiting the Association from answering requests for information from third parties planning unsolicited advertisements.

This opinion is confined to gifts relating to projects such as a pay raise or similar projects from which the Association members, or their immediate families, derive direct pecuniary benefit. This opinion does not apply to gifts in support of charitable purposes from which the Association members and their immediate families derive no direct pecuniary benefit.

The Commission has earlier ruled that the Association and its members may actively solicit and accept gifts in support of charitable projects, such as acquiring bulletproof vests - job related equipment necessary for safe and efficient police operations. The Association and its members could provide assistance to donors seeking to place advertisements in support of charitable projects from which the members and their immediate families did not derive direct pecuniary benefit.

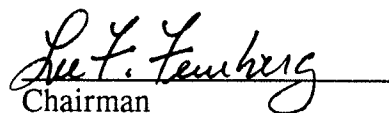
The Commission points out that WV Code §6B-3-5 requires persons and businesses to register and report as sponsors of a grass roots lobbying campaign, if they make expenditures in excess of specified amounts in presenting a program addressed to the public, a substantial portion of which is designed primarily to influence legislation. Registration is required when expenditures exceed five hundred dollars in the aggregate within any three month period or two hundred dollars in the aggregate within any one month period.

Use of Undesignated Gifts

The Association represents that many times it receives voluntary donations from concerned citizens throughout the State. Often these donations are accompanied by a request that the donation be used for a distinct charitable purpose. However, sometimes these contributions are not earmarked for any specific function. The Association would like to utilize donations that have not been solicited and have not been earmarked by the donor to finance Association office expenses and/or administrative expenses.

Obviously, since the Association is permitted to solicit gifts for a charitable purpose, it may also accept and use for the designated purpose those gifts which are earmarked for charitable purposes. However, office expenses and/or administrative expenses would not be considered a charitable purpose and the Association may not accept gifts for the use of the Association or its members unless they are gifts of nominal value.

Therefore, it would be a violation of the Ethics Act for the Association to utilize private donations to finance Association office expenses, administrative expenses or any other noncharitable activity unless the contribution is of nominal value (i.e. value of \$25 or less).


Chairman